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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JOHN ERIC HURTADO, Defendant and Appellant.	H045969 (Santa Cruz County Super. Ct. No. 16CR08316)

Appellant John Eric Hurtado appeals the trial court's denial of his motion to suppress evidence seized by the California Highway Patrol (CHP) in connection with a traffic enforcement stop. Hurtado contends that the CHP did not have reasonable suspicion to detain him, and therefore the trial court erred in denying Hurtado's motion to suppress. For the reasons explained below, we affirm the trial court's judgment.

I. FACTS AND PROCEDURAL BACKGROUND

The facts underlying Hurtado's offenses are largely irrelevant to this appeal. Hurtado was charged in a 16-count amended information, which consolidated four cases against him and included a number of allegations. Hurtado filed a motion to suppress evidence related to three of the sixteen counts of the information. After the trial court denied Hurtado's motion to suppress, Hurtado entered a no contest plea to all counts and

allegations and was sentenced to prison.[1] Hurtado appeals the trial court's denial of his motion to suppress but does not challenge any other aspect of the judgment against him.

The trial court conducted a hearing on Hurtado's motion to suppress on February 21, 2018. The sole witness at the hearing was Officer Cory Chapman. Chapman worked for the CHP and had been a sworn peace officer since January 2016. On March 27, 2016, at approximately 4:10 a.m., Chapman was on patrol and was driving southbound on Highway 1. As Chapman passed Morrissey Boulevard, he saw a vehicle that merged onto the freeway and entered the middle lane of the freeway, which Chapman described as "the number two lane."

When the car entered the freeway, it was "approximately a hundred yards south" of Officer Chapman's location. Chapman was in the "number one lane."[2] The car was ahead of Chapman and in the middle lane. The highway in this area curved at various points and sloped up and down. Chapman stated "[a]t one point, the vehicle made an unsafe turning movement from the center lane to the number three lane. So to the far right lane. And went into the number three lane and then came back. So that's what I observed as far as the violation." Chapman's car was about 100 yards behind the other car when this action occurred. Chapman's car and the other car were the only vehicles on the road at that time.

When asked to describe the action in more detail, Officer Chapman stated, "it was a very quick jerking movement and went—the right wheels went into the number three lane, and then it went back into the center lane. And it was just a very unsafe moving—unsafe movement." Chapman did not see the driver of the car use any turn signals prior to the car making the jerking movement. Chapman testified that the movement caused him concern because "[t]ypically, especially this time of night, it's indicative of people

[1] One allegation against Hurtado was stricken by the trial court.
[2] Chapman testified that the number one lane is the "fast lane."

that are impaired can't maintain their lane and make turning movements such as the one I observed."

The prosecutor then asked, "And in addition to someone being potentially under the influence, would you have any other concerns about a vehicle making that kind of movement?" Chapman answered, "Yes. Make sure—I mean, it could possibly get involved with a collision, you know, with that turning movement made." Based on his observations, Chapman initiated a traffic enforcement stop.

On cross-examination, Hurtado's defense counsel showed Officer Chapman a video taken from his car (described in the trial court as the "MVARS"[3]) of the events to which he had testified. Approximately 30 seconds into the video, Chapman identified Hurtado's car entering the freeway. At 53 seconds into the video, Chapman identified the movement in which the car crossed into the number three lane. Chapman stated, "[n]ow you can see it coming all the way back over almost to the dash lines on the left side, like, close to the number one lane, or the fast lane." At 1:06 minutes into the video, Chapman began to perform the traffic stop.

Officer Chapman testified that, compared to his view on the night in question, "[i]t's harder to see on this video. It's pretty grainy." Chapman had no doubt that Hurtado had crossed from the number two lane to the number three lane and then back again.

The trial court heard arguments from counsel about whether the conduct Officer Chapman described constituted a violation of Vehicle Code section 22107.[4] The trial court stated its factual and legal findings. The court found "with respect to the officer, I found his testimony to be credible, and I believed his testimony. [¶] With respect to the MVARS, I agree that the MVARS is blurry, and I believe the officer's testimony that his

[3] MVARS stands for mobile video audio recording system. (See *Espinoza v. Shiomoto* (2017) 10 Cal.App.5th 85, 95 [defining MVAR].)

[4] Unspecified statutory references are to the Vehicle Code.

ability to see was better than the MVARS, because, if that's all you can see when you're driving, that's very concerning, because it's fuzzy, it's not clear, and a driver would absolutely have to have better vision to be driving. So I accept his testimony as credible that he could see in a clearer fashion than we were able to see on the MVARS after the fact."

The trial court stated, "I find as a fact in this matter that [Hurtado's] vehicle did, in fact, go from the number two lane into the number three lane, crossing over that line and then jerked back into the number two lane. I thought I observed that on the video when I was watching, and the officer testified that's what he saw that night. And I make a factual finding that that is, indeed what happened."

Turning to its legal conclusions, the trial court stated, "I'm going to candidly acknowledge I believe this is a somewhat close question. And I carefully went back to look at the cases." The trial court denied the motion to suppress, relying on two rationales. First, the trial court concluded that the officer had the authority to stop "a driver who's made an unsafe erratic movement." Second, the trial court found, under section 22107, "if you're turning or moving, you have to signal, because anything behind you may be affected by it." The trial court rejected Hurtado's argument that, under sections 22107 and 22108, a driver only has to signal if there is another car within 100 feet.

II. DISCUSSION

Hurtado argues that substantial evidence does not support the trial court's factual determination that the wheels of his car crossed from the number two lane to the number three lane and then back again. Hurtado contends that the MVARS video taken from Chapman's vehicle directly contradicted Chapman's testimony and did not show the jerking movement described by the officer. Turning to the trial court's legal conclusions, Hurtado argues the trial court erred in its determination that, even assuming the accuracy of the factual conclusion made by the trial court, Hurtado's conduct did not violate

section 22107 because no other vehicle was affected by Hurtado's lane change. Hurtado also disputes the trial court's legal conclusion that Hurtado's unsafe driving provided sufficient basis for the car stop because Hurtado's "slight movement" into the adjacent lane was not sufficient to establish a reasonable suspicion that he was impaired.

When reviewing a trial court's ruling on a suppression motion, "an appellate court independently applies the law to the trial court's factual findings, determining de novo whether the findings support the trial court's ruling." (*Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998, 1006.) "[W]e defer to the trial court's factual findings, express or implied, where supported by substantial evidence." (*People v. Simon* (2016) 1 Cal.5th 98, 120.) "On appeal we consider the correctness of the trial court's ruling itself, not the correctness of the trial court's reasons for reaching its decision." (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145.)

A. *Substantial Evidence Supports the Trial Court's Factual Finding*

Hurtado contends that the trial court's factual finding that he moved from the number two to the number three lane and back again is not supported by substantial evidence because it is contradicted by the MVARS video. Hurtado argues that, instead of the normal deferential standard applied to factual findings of the trial court, we should instead employ de novo review because we are similarly situated to the trial court in assessing evidence depicted in a video recording. For this proposition, Hurtado relies on the de novo standard used by the California Supreme Court when reviewing the voluntariness of a videotaped confession. The Supreme Court has stated, "[t]he facts surrounding an admission or confession are undisputed to the extent the interview is tape-recorded, making the issue subject to our independent review." (*People v. Linton* (2013) 56 Cal.4th 1146, 1177.)

Hurtado cites no case applying a similar standard in the context of a suppression motion brought under the Fourth Amendment. More significantly, the facts surrounding what Officer Chapman saw on Highway 1 on the night in question are disputed. The trial

court found that the MVARS did not completely capture what the officer in fact observed, because the video was blurry and grainy to a degree that it would have been unsafe to drive if it perfectly reflected the officer's vision. Therefore, the trial court relied on both the video evidence and on the officer's testimony. The trial court specifically found the officer to be credible on the key disputed fact of whether Hurtado had made the lane change. The trial court relied in part on its credibility finding in making its ultimate determination as to the facts. Because the facts were disputed and not perfectly captured by the video admitted into evidence, we apply deference, rather than independent review, to the trial court's factual findings.

Turning to the question of whether substantial evidence supports the trial court's factual finding of Hurtado's lane change, we do not agree with Hurtado's interpretation of the video. We have reviewed the video and agree with the trial court that, although the video is not especially clear, it does support Officer Chapman's testimony about Hurtado's actions. Therefore, substantial evidence supports the trial court's factual conclusion that Hurtado made the lane change. We turn now to the question whether the evidence supports the trial court's legal conclusion that Chapman had reasonable suspicion that Hurtado had engaged in a violation of the Vehicle Code.[5]

B. *The Officer's Detention of Hurtado was Reasonable*

" 'A defendant may move to suppress evidence on the ground that "[t]he search or seizure without a warrant was unreasonable." ([Pen. Code,] § 1538.5, subd. (a)(1)(A).) A warrantless search is presumed to be unreasonable, and the prosecution bears the burden of demonstrating a legal justification for the search.' " (*People v. Suff* (2014) 58 Cal.4th 1013, 1053 (*Suff*).)

"Ordinary traffic stops are treated as investigatory detentions for which the officer must be able to articulate specific facts justifying the suspicion that a crime is being

[5] Hurtado does not challenge any aspect of the detention other than the officer's reasonable suspicion for initiating the stop.

committed." (*People v. Hernandez* (2008) 45 Cal.4th 295, 299.) "The touchstone of the Fourth Amendment is reasonableness. [Citation.] Whether an officer's conduct was reasonable is evaluated on a case-by-case basis in light of the totality of the circumstances." (*In re Raymond C.* (2008) 45 Cal.4th 303, 307.) "The motivations of the officer are irrelevant to the reasonableness of a traffic stop under the Fourth Amendment. [Citation.] 'All that is required is that, on an objective basis, the stop "not be unreasonable under the circumstances." ' " (*Suff, supra*, 58 Cal.4th at p. 1054.) "[O]fficers are not entitled to rely on mere hunches" (*Hernandez*, *supra*, at p. 299) but instead must point to "articulable facts" (*ibid*.) and "particularized suspicion" (*id*. at p. 301) that the defendant "may have been acting illegally." (*Id.* at p. 299.) "Reasonable suspicion is a lesser standard than probable cause, and can arise from less reliable information than required for probable cause." (*People v. Wells* (2006) 38 Cal.4th 1078, 1083.)

The parties devote much of their briefing to whether section 22107 is violated when a person fails to signal a lane change when there is no car within 100 feet.[6] We need not reach this question, however, because we conclude that Chapman had reasonable suspicion to detain Hurtado for driving under the influence, in violation of section 23152.[7]

Officer Chapman testified to the following facts: Hurtado was driving on the highway at approximately 4:10 a.m.; less than 30 seconds after Hurtado's car entered the

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[6] Section 22107 provides "No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter in the event any other vehicle may be affected by the movement."

[7] That provision states in relevant part, "(a) It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle. [¶] . . . [¶] (f) It is unlawful for a person who is under the influence of any drug to drive a vehicle. [¶] (g) It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle." (§ 23152, subds. (a), (f) & (g).)

freeway, Chapman saw Hurtado's car make a "quick jerking movement," in which Hurtado's car crossed from the middle lane to the right lane and back again; Hurtado's car did not use any turn signals when making these two lane changes; and the officer perceived Hurtado's car's movement as "unsafe." Based on these factors, Officer Chapman was concerned by the movement of Hurtado's car: "especially this time of night, it's indicative of people that are impaired [and] can't maintain their lane and make turning movements such as the one I observed." Taken together, these facts provide reasonable, articulable suspicion that Hurtado was driving under the influence. (See *People v. Russell* (2000) 81 Cal.App.4th 96, 102 [finding reasonable suspicion for a traffic stop where "the erratic driving justified the stop to determine whether the driver was intoxicated"].)

Hurtado contends that a single swerve into an adjacent lane does not provide a basis for a reasonable suspicion that the driver is impaired. However, Hurtado relies for this proposition on cases that examine only weaving within a single lane and do not address a car moving from one lane to another and back again. (See, e.g., *U.S. v. Colin* (9th Cir. 2002) 314 F.3d 439, 444 (*Colin*).) By contrast, "it has been clearly established in this state that weaving from one lane to another justifies an investigatory stop." (*People v. Perez* (1985) 175 Cal.App.3d Supp. 8, 10.)

Furthermore, Hurtado ignores the additional relevant fact that he was driving at 4:10 a.m. In assessing the constitutionality of drunk driving checkpoints, the California Supreme Court has assumed that drivers are more likely to be under the influence of alcohol at night than they are during the daytime. (*Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1345 ["[A] nighttime stop may be more hazardous and possibly more frightening to motorists, but it will also probably prove more effective."].)

In addition, Hurtado did not use his signal when changing lanes. Although we do not resolve here whether Hurtado's failure to signal his lane change independently constituted a violation of the Vehicle Code, failure to use a signal for a lane change can

be an indicator of unsafe driving. As one Court of Appeal has stated when discussing section 22107, "[t]he lack of a signal could have been due to the driver's drifting into the lane without intending to do so, with the possible result of a very sudden over-correction upon the error's discovery. Or, the driver could have unknowingly changed lanes due to a sudden illness or sleepiness." (*People v. Logsdon* (2008) 164 Cal.App.4th 741, 746, italics omitted.) Indeed, *Colin*, *supra*, 314 F.3d 439, a case Hurtado relies heavily on in his briefing, found no reasonable suspicion of driving under the influence in part because the driver in that case used a signal when making a lane change. (*Id*. at p. 445 [noting the defendant "drove within the speed limit and properly activated his turn signals before making lane changes"].)

Hurtado contends that Officer Chapman had insufficient expertise to conclude that Hurtado might have been driving under the influence because Chapman had only been a CHP officer for two months, and he did not testify about his training and expertise. We do not find this argument persuasive. "[R]ecognizing a weaving driver is undoubtedly within the province of even the most junior officer. It is, we posit, even within the ability of most fellow drivers." (*Arburn v. Department of Motor Vehicles* (2007) 151 Cal.App.4th 1480, 1485.) Hurtado's jerky, unsignaled lane change similarly did not require a sophisticated level of expertise to provide reasonable suspicion that Hurtado might be driving under the influence of alcohol or drugs.

The reasonableness of Officer Chapman's action in pulling Hurtado over must be assessed in light of the alternative investigatory options. Courts have frequently recognized that officers who suspect an individual of driving under the influence have few reasonable options other than making a traffic stop. "The officer can either stop the vehicle immediately and ascertain whether the driver is indeed operating under the influence of drugs or alcohol or he can follow and observe the vehicle and run the risk the suspect will veer into oncoming traffic, run a red light, strike a pedestrian or otherwise cause a sudden and devastating accident. . . . [T]here is a substantial government interest

in effecting a stop as quickly as possible." (*Lowry v. Gutierrez* (2005) 129 Cal.App.4th 926, 939, internal quotation marks omitted.)

As the California Supreme Court has observed when upholding the legality of a car stop of a suspected driver under the influence based solely on an anonymous tip, "[i]n contrast to the report of an individual in possession of a gun, an anonymous report of an erratic or drunk driver on the highway presents a qualitatively different level of danger, and concomitantly greater urgency for prompt action. In the case of a concealed gun, the possession itself might be legal, and the police could, in any event, surreptitiously observe the individual for a reasonable period of time without running the risk of death or injury with every passing moment. An officer in pursuit of a reportedly drunk driver on a freeway does not enjoy such a luxury. Indeed, a drunk driver is not at all unlike a 'bomb,' and a mobile one at that." (*People v. Wells* (2006) 38 Cal.4th 1078, 1086, internal quotation marks omitted.) The Supreme Court has suggested that it might be unreasonable for an officer to fail to investigate a drunk driver. "Police officers undoubtedly would be severely criticized for failing to stop and investigate a reported drunk driver if an accident subsequently occurred." (*Id.* at p. 1087.) Furthermore, the United States Supreme Court has characterized the intrusiveness of a car stop of a driver at a sobriety checkpoint as "slight." (*Michigan Dept. of State Police v. Sitz* (1990) 496 U.S. 444, 451.) These considerations underscore the reasonableness of Officer Chapman's actions.

We note also that Hurtado made the sudden, jerky movement into the lane and back again approximately 30 seconds after he entered the freeway. Hurtado did not exhibit safe driving over an extended distance; instead, he committed the act almost as soon as Officer Chapman was behind him. "There is a reasonable inference that something is wrong when a vehicle weaves while it is being followed by a law enforcement officer and that the cause may be a driver under the influence of alcohol or drugs." (*People v. Bracken* (2000) 83 Cal.App.4th Supp. 1, 4.)

Finally, Officer Chapman was not required to eliminate innocent explanations for Hurtado's conduct before conducting the investigative traffic stop. " '[The] possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of his investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal to "enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges." ' " (*People v. Leyba* (1981) 29 Cal.3d 591, 599.) If Hurtado swerved solely because of the curving and hilly road, for example, he could have disclosed that fact to Chapman during the traffic stop.

Considering the totality of the circumstances, we conclude that Officer Chapman had reasonable suspicion to conduct a traffic stop of Hurtado to investigate whether Hurtado was driving under the influence of alcohol or drugs. As Hurtado does not challenge any other aspect of the seizure or subsequent search, we affirm the trial court's order denying the motion to suppress.

III. DISPOSITION

The judgment is affirmed.

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DANNER, J.

WE CONCUR:

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MIHARA, ACTING, P.J.

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GROVER, J.

People v. Hurtado
H045969